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RAYMOND G. FORTNER, JR.  
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May 11, 2007

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR YVONNE B. BURKE  
SUPERVISOR DON KNABE  
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: RAYMOND G. FORTNER, JR.  
County Counsel

RE: **2007-2008 HUD Grant Funding Action Plan Board Letters**

The agenda for the meeting of your Board for May 22, 2007, will include three separate sets of recommendations, made respectively to the Board of Supervisors, the Board of Commissioners of the Community Development Commission ("CDC"), and the Board of Commissioners of the Housing Authority, which are intended to satisfy the National Affordable Housing Act's requirement that the County provide a single, consolidated submission of the proposed expenditure of funds to be eligible for HUD formula grant funding, and to adopt the Action Plan for the allocation of federal funds.

In past years, this action has included the approval of contracts between the County and the CDC, and the County and the Housing Authority related to the allocation of funding for those projects directly implemented by the CDC and Housing Authority, as opposed, for example, to projects implemented by a city or community-based organization. Recently, an issue was raised by a member of a committee which was tasked by the CDC to evaluate the applicants for a specific loan program being administered by the CDC regarding the propriety, under the conflict of interest laws, for the County to contract with the CDC.

As you are aware, in general terms, Government Code section 1090 et seq. precludes public officials and employees from participating in the making of contracts in which they have a financial interest. Based on some

relatively recent amendments to this statutory scheme, income from a governmental entity may, in some circumstances, constitute a financial interest. Thus, the issue raised was the application of this law to the participation by Carlos Jackson and his staff in County decisions regarding the contracts between the County and the CDC/Housing Authority, given that they are CDC/Housing Authority employees. While we believe there are very strong arguments as to why the conflict laws should not impact these contracts, under a very technical reading of the statutes, a conflict could be found. Given the potential personal consequences to Mr. Jackson and his staff and the potential severe implications to the contracts, we advised Mr. Jackson that it would be most prudent to slightly restructure the action to eliminate the issue.

As a result, to address this issue, the actions which will be presented to your Board on May 22, 2007, will not include contracts between the County and the CDC or between the County and the Housing Authority. Instead, the recommendations will be for your Board to approve the Action Plan and the actions necessary to implement it, including the designation of the CDC as the agent of the County to administer the Action Plan, and the approval of the funding to the Housing Authority. The recommendations to the Board of Commissioners of the CDC will include those actions necessary for the CDC to function as the County's agent. The recommendations to the Board of Commissioners of the Housing Authority will be to accept and administer the funding from the County. As structured in these recommendations, your Board will approve funding allocations to both the CDC and the Housing Authority for the projects which they will be directly implementing and will not require contracts be executed with those entities, thereby taking the action out of the purview of section 1090.

While the format of these recommendations will differ somewhat from the format in previous years, you, through your actions as the Board of Supervisors, the Board of Commissioners of the CDC, and the Board of Commissioners of the Housing Authority, will continue to exercise the same overall level of decision-making authority as you have exercised in the past as to the design and implementation of the Action Plan and the allocation and expenditure of these funds.

We recognize that the finding of a conflict in this situation goes against logic and, as stated, firmly believe there exists a strong argument against such an application of the law. However, again, given the ramifications attached to a violation of the statute we felt this slight restructuring is the best approach, as we continue to discuss with Mr. Jackson and his staff options to clarify the statute's application, such as through an Attorney General opinion or legislation.

If you have questions concerning this matter, please contact me, Senior Assistant County Counsel Steven J. Carnevale at (213) 974-1810, or Principal Deputy County Counsel Barbara Y. Goul at (213) 974-1834.

RGF:BYG:plp

c: David E. Janssen  
Chief Administrative Officer

Sachi A. Hamai, Executive Officer  
Board of Supervisors

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